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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-688

ANTHONY R. LADUCA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The court of appeals affirmed without opinion (Pet. App. 1a).

JURISDICTION

The judgment of the court of appeals was entered on October 29, 1971. On November 22, 1971, the petition for a writ of certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's conviction of conspiracy to transport and sell stolen property.

2. Whether the evidence was sufficient to support petitioner's conviction for perjury.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on counts 1 and 2 of a three-count indictment. Count 1 charged that petitioner and co-defendant Ivler had conspired with an unknown third person to transport stolen property of a value of more than $5,000 in interstate commerce, knowing the property to have been stolen, for the purpose of obtaining a ransom for it in violation of 18 U.S.C. 371.[1] Counts 2 and 3 charged petitioner with perjury before a federal grand jury in connection with this transaction in violation of 18 U.S.C. 1621.[2] On June 18, 1971, petitioner was sentenced to concurrent prison terms of one year. The court of appeals affirmed without opinion (Pet. 1a-2a).

1. The government's evidence on the conspiracy charge showed that on the night of June 13, 1966, a highly valuable quantity of antique snuff boxes and cane handles was stolen from the offices of the Antique

[1] The jury found co-defendant Ivler not guilty.

[2] At the close of the government's case, the trial judge dismissed count three.

Porcelain Company of New York City (Tr. 46-47). The shop's proprietor, Mr. Weinberg, reported the theft to the police and was subsequently compensated in the amount of $75,000 by his insuror, Lloyds of London (Tr. 352).

On January 16, 1970, an insurance adjuster for the firm of Toplis and Harding, independent claim adjusters for Lloyds of London, received a telephone call regarding stolen antiques (Tr. 37). The caller stated that he was an attorney and that he represented a client who had innocently come into possession of a quantity of goods which he believed had been stolen from the Antique Company of New York (Tr. 37-38). The attorney also indicated that his client was "looking for a reward" (Tr. 38). After determining that his firm had not handled the claim, the adjuster referred the caller to Mr. Weinberg (Tr. 39).

During the week of January 19, 1970, petitioner and his codefendant, both New Jersey lawyers, visited Mr. Weinberg at his store[3] (Tr. 58-59). Petitioner stated that he represented a client, whose name he did not disclose, who had found some antiques which he believed had been stolen from Weinberg's place of business (Tr. 59). When questioned as to how he knew the articles in his client's possession were the stolen items, petitioner replied that a newspaper ar-

[3] "Tr." designates the five-volume trial transcript. "A." designates petitioner's one-volume appendix in the court of appeals, containing, *inter alia*, the transcript of petitioner's grand jury testimony and the trial court's charge. We are lodging these records with the Clerk.

ticle, discussing the theft, had been found with the goods (Tr. 59).[4] Petitioner expressed a desire to aid Mr. Weinberg in obtaining his property, but made it clear that "the return of the goods was dependent on * * * payment" (Tr. 110). Weinberg suggested a possible reward of $7500—the payment to be made by check and the transfer to occur at a police station. Petitioner indicated that payment would have to be in cash (Tr. 60). Despite petitioner's assurances, Weinberg remained skeptical that the goods in the client's possession were those actually stolen from his store and demanded further proof. Several days later, Weinberg received three color photographs showing a porcelain cane handle and snuff boxes identical to those stolen (Tr. 61-63).

After Mr. Weinberg received this photograph, he placed petitioner in contact with Joseph Chapman, a former F.B.I. agent, who had been hired by the insurance company to negotiate for the return of the property (Tr. 65, 333). Following some preliminary discussions concerning payment on the telephone, petitioner agreed to meet Chapman at a New York City hotel and seek to arrive at a mutually agreeable price and the means for the return of the property (Tr. 338-339). At the meeting, petitioner stated that his client had found the antiques while searching the per-

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[4] Lawrence Diamond, a former member of the Ethics Committee of the New Jersey Bar Association, testified that petitioner had told him essentially the same story. In addition, petitioner showed Diamond a newspaper article reporting the theft and naming the firm involved. Petitioner had contacted Diamond to determine whether it would be ethical to represent a client in an effort to obtain a reward (Tr. 18-24).

sonal effects of a deceased relative (Tr. 338). Petitioner further related that the client had offered him a flat fee plus a percentage of the recovery if petitioner could obtain an acceptable reward (Tr. 343). As the negotiations proceeded, petitioner stated that the proposed reward of $7,500 would be insufficient and suggested $35,000 (Tr. 342-343). The meeting concluded with the parties reaching no agreement as to price or manner of exchange; however, petitioner agreed to contact Chapman after discussing the matter further with his client (Tr. 344). When Chapman spoke to petitioner the following day, petitioner stated that he had spoken to his client and that the suggested reward of $7,500 was completely unacceptable (Tr. 344). Negotiations were terminated at that point.

Approximately two weeks later, petitioner was interviewed by F.B.I. agent Laughlin (Tr. 365-366). Laughlin questioned petitioner regarding his involvement with the stolen antiques and requested that petitioner reveal the identity of his client (~~Tr. 366~~). A. 159 Petitioner refused to divulge their names—he said he had two clients, one of whom was an intermediary—asserting the attorney-client privilege (Tr. 366).[5] However, petitioner did state that he was not sure whether he actually knew the principal client's real name, since he knew only the name the client had given him (A.

[5] At his initial grand jury appearance on October 15, 1970, petitioner reasserted the attorney-client privilege when questioned as to this matter (A. 344). A hearing was scheduled in the district court to determine the applicability of the privilege. Prior to the hearing, petitioner again appeared before the grand jury and disclosed the names of the client and intermediary.

159). Petitioner further related that his direct dealing had been exclusively with an intermediary, and it was the intermediary who had supplied him with samples of the merchandise and the photographs (Tr. 718).* Petitioner also refused to disclose the identity of the intermediary to agent Laughlin (Tr. 366, 715).

2. On October 15, 1970, petitioner appeared before a federal grand jury in the Southern District of New York which was investigating, *inter alia*, whether he had knowingly participated in seeking a ransom from an insurance company for the stolen property insured by the company. At that time, petitioner gave the following testimony which was charged in count 2 as perjurious (A. 335-338):

> Q. Did he [the client] say whether it [the newspaper story] had disclosed whether they were stolen, or why these articles were newsworthy? Did he ever tell you that they were stolen?
>
> A. No.
>
> * * * *
>
> Q. Did he say if the private detective had discovered that they were stolen.
>
> A. No.
>
> * * * *
>
> Q. Well, how about a report that you found out that they had been stolen from a Mr. Weinberg?
>
> A. I think we ultimately discovered that, whether the client knew it or not, I don't know, but I discovered it.

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* In his second appearance before the grand jury, on October 19, 1970, petitioner testified in contradiction to what he had told agent Laughlin, stating that it was the client, not the intermediary, who had brought him the samples and photographs of the stolen antiques (A. 352).

Q. How did you discover it?
A. We went in to see Mr. Weinberg.

* * * *

Q. You didn't know that these belonged to Mr. Weinberg prior to the time that you called Toplis & Harding?
A. No.

ARGUMENT

1. Petitioner argues that the proof did not establish that he attempted to exact a reward as a condition for return of the property, which he assumes would be sufficient to sustain his conviction, but showed only that he was lawfully negotiating the return of the goods to the true owner. However, the testimony of both Weinberg and insurance negotiator Chapman established that petitioner had persistently demanded a satisfactory payment as a condition to returning the stolen property and that he had repeatedly rejected the proposed reward of $7,500 as being unsatisfactory to his client. Negotiations were broken off, when an acceptable price could not be agreed upon, without the return of the property. Moreover, the testimony of agent Laughlin, when considered together with petitioner's testimony before the grand jury, revealed that the information petitioner disclosed regarding his relationship with his client or clients was both contradictory and evasive. The jury could reasonably infer that petitioner's statements describing his dealings with the client and intermediary were given in an effort to frustrate further inquiry. In view of all the circumstances, there

was an adequate basis for the jury to conclude that petitioner had been engaged in a conspiracy in which payment was demanded as a condition for the return of stolen goods.

Petitioner also contends that the jury's verdict was improper because the government failed to elicit any direct evidence of an agreement by petitioner to enter a conspiracy. It is, however, well settled that participation in a criminal conspiracy may be established by circumstantial as well as direct evidence. *Delli Paoli* v. *United States*, 352 U.S. 232, 236 n. 4. Here, as shown above, there was sufficient evidence of an agreement with the intermediary and client to support the conspiracy charge.

2. Petitioner's contention that his perjury conviction—upon which he received a concurrent sentence—is not supported by the evidence is also without merit. The trial judge without objection properly instructed (A. 302-303) that to convict petitioner of perjury the jury had to find beyond a reasonable doubt only that any one of the answers set forth in Count 2 was deliberately false. See *Vitello* v. *United States*, 425 F. 2d 416, 419-422 (C.A. 9), certiorari denied, 400 U.S. 822. In fact, the proof established that both the first and last answers to the questions propounded by the grand jury (see *supra*, pp. 6-7) were intentionally false.

Petitioner argues (Pet. 37-38) that the first question (see *supra* p. 6) embodied three distinct questions and that if his answer was truthful as to any of these the response would not be perjurious. Whatever the merits of this contention, it has no relevance

in this case since the proof established the falsity of petitioner's answer to each of the three alleged subquestions. Weinberg and Diamond both testified that petitioner had told them that the client had informed him that the newspaper item disclosed the theft and in view of the attempt to seek a reward it must have advised why the stolen articles were newsworthy. Moreover, the jury could reasonably infer that the client's statement that he had a newspaper article disclosing that the goods had been stolen was tantamount to a statement by him that the antiques were in fact stolen. As to the final question and answer, the testimony of Weinberg, Diamond and Chapman, as well as the representative of the firm of Toplis and Harding concerning petitioner's conversations with them established that petitioner had told them that he had been advised by his client that the antiques had been stolen from Weinberg's store.[7] It should further be noted that since Mr. Diamond testified that petitioner showed him the newspaper article regarding the theft (Tr. 21-22), this is not a case in which the evidence of the perjury rested solely on petitioner's out-of-court declarations. Cf. *United States* v. *Goldberg*, 290 F. 2d 729, 733-734 (C.A. 2).

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[7] Petitioner makes the strained and untenable argument (Pet. 41-42) that while petitioner knew that the property was stolen from Mr. Weinberg' company, there is no evidence that he knew that the stolen items belonged to Mr. Weinberg. See *Vitello* v. *United States, supra*, 425 F. 2d at 421.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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